



**FILED**

4-05-16  
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas  
and Electric Company for Approval of its  
Electric Vehicle Infrastructure and Education  
Program (U39E).

A.15-02-009  
(Filed February 9, 2015)

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY  
REFORM NETWORK, ELECTRIC VEHICLE CHARGING ASSOCIATION,  
TECHNET, CHARGEPOINT, JOINT MINORITY PARTIES AND VOTE SOLAR  
TO THE MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT**

DATE: April 1, 2016

Elise Torres  
Staff Attorney  
**The Utility Reform Network**  
San Francisco, CA 94103  
Phone: (415) 929-8876 ext. 308  
Email: [etorres@turn.org](mailto:etorres@turn.org)

James M. Ralph  
Attorney for the  
**Office of Ratepayer Advocates**  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-4673  
Email: [james.ralph@cpuc.ca.gov](mailto:james.ralph@cpuc.ca.gov)

Tadashi Gondai  
Senior Attorney  
**National Asian American Coalition**  
**on behalf of the Joint Minority Parties**  
15 Southgate Avenue, Suite 200  
Daly City, CA 94015  
Phone: (650) 952-0522 x235  
Email: [tgondai@naacoalition.org](mailto:tgondai@naacoalition.org)

Damon Conklin  
**Electric Vehicle Charging Association**  
1020 16<sup>th</sup> Street, Suite 20  
Sacramento, CA 95814  
Phone: (916) 447-4099  
Email: [Damon.Conklin@DeweySquare.com](mailto:Damon.Conklin@DeweySquare.com)

Gregg Wheatland  
Lynn Haug  
Ellison, Schneider & Harris, LLP  
Attorneys for **ChargePoint, Inc.**  
2600 Capital Avenue, 4<sup>th</sup> Floor  
Sacramento, CA 95816  
Phone: (916) 447-2166  
Email: [glw@eslawfirm.com](mailto:glw@eslawfirm.com)

Andrea Deveau  
Executive Director, California and  
Southwest U.S.  
**TechNet**  
1001 K Street, Sixth Floor  
Sacramento, CA 95814  
Phone: (805) 234-5481  
Email: [adeveau@technet.org](mailto:adeveau@technet.org)

Jim Baak  
Program Director, Grid Integration  
**Vote Solar**  
360 22<sup>nd</sup> Street, Suite 730  
Oakland, CA 94612  
Phone: (925) 788-3411  
Email: [jbaak@votesolar.org](mailto:jbaak@votesolar.org)

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas  
and Electric Company for Approval of its  
Electric Vehicle Infrastructure and Education  
Program (U39E).

A.15-02-009  
(Filed February 9, 2015)

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY  
REFORM NETWORK, ELECTRIC VEHICLE CHARGING ASSOCIATION,  
TECHNET, CHARGEPOINT, JOINT MINORITY PARTIES AND VOTE SOLAR  
TO THE MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT**

In accordance with Rule 11.1(e) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Office of Ratepayer Advocates (“ORA”), The Utility Reform Network (“TURN”), the Electric Vehicle Charging Association (“EVCA”), TechNet, ChargePoint, Inc., Joint Minority Parties and Vote Solar (collectively, the “Non-Settling Parties”) respectfully submit this response to the Joint Motion For Adoption Of Settlement Agreement By Pacific Gas And Electric Company (“PG&E”) and others (collectively, the “Settling Parties”).<sup>1</sup> By this response to the Joint Motion, the Non-Settling Parties request that the Commission receive the proposed Settlement (“Settlement”) as joint testimony of the Settling Parties pursuant to Rule 12.4(a) of the Rules of Practice and Procedure. This response is filed pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, and should this request not be granted, the Non-Settling Parties expressly reserve the

---

<sup>1</sup> The Settling Parties are PG&E, Alliance of Automobile Manufacturers, American Honda Motor Co., Inc., Center for Sustainable Energy, Coalition of California Utility Employees (“CCUE”), Greenlots, The Greenlining Institute (“Greenlining”), Marin Clean Energy, Natural Resources Defense Council (“NRDC”), Plug In America, General Motors LLC, Sierra Club, and Sonoma Clean Power Authority.

right under Rule 12.2 to comment on the Settlement, and all other procedural rights with respect to the Settlement.

This response is filed after issuance of the Administrative Law Judge's March 29, 2016 Ruling Setting Hearing Schedule and Directing Joint Settling Parties To Respond To Various Questions ("Ruling"), and addresses below how the relief requested herein is consistent with, and may be coordinated with, the scheduling and actions ordered in the Ruling.

The proposed Settlement should be received as joint testimony because the Joint Motion's characterization of the Settlement as a negotiated resolution of disputed issues is inaccurate. In fact, the Settlement does not reflect a compromise of contested issues, does not resolve the disputed issues in this proceeding and is not a consensus among active parties. As such, it cannot possibly meet the Commission's threshold requirements for settlement. Under these circumstances, the appropriate course of action is to receive the Settlement as joint testimony at the evidentiary hearings scheduled to commence on April 25.

This procedural approach is clearly authorized by the Rules of Practice and Procedure. Rule 12.4 provides that the Commission "may reject a proposed settlement whenever it determines that the settlement is not in the public interest" and the Commission may take various steps, including holding "hearings on the underlying issues, in which case the parties to the settlement may either withdraw it or offer it as joint testimony."<sup>2</sup> Because the proposed Settlement is not an agreement negotiated at arms-length among contesting parties, but is, instead more akin to joint testimony offered by parties that either support or are agnostic to the proposal set forth in PG&E's application and testimony, it is appropriate and necessary for the Commission to proceed directly to hearings on the underlying issues, and to allow the Settlement to be offered as joint testimony.

---

<sup>2</sup> Rule 12.4(a).

This procedural approach is also consistent with the ALJ's March 29, 2016 Ruling setting a hearing schedule. The Ruling has set hearings for the week of April 25, 2016. The ALJ directed the signatories to the Settlement Agreement to designate no more than five individuals (at least one of whom shall be PG&E) to serve as a panel to respond to cross-examination questions specific to the Settlement. The ALJ also directed the Settling Parties to respond to the questions presented in Attachment A to the ruling on or before April 12, 2016.

If the relief requested herein by the Non-Settling Parties is granted, hearings on all disputed issues in this proceeding can be held the week of April 25, at which time the Settlement can be offered as joint testimony of the Settling Parties. A panel can be presented by signatories to the joint testimony, to respond to questions on the joint testimony. And the signatories to the joint testimony should still serve (but not file) a response to the questions posed in Attachment A to the Ruling, which response would be offered as supplemental joint testimony of the Settling Parties.

The Non-Settling Parties do have a concern with one aspect of the Ruling. The responses to the detailed questions posed in Appendix A will likely provide new information that is not already in the record, or may effectively modify the version of PG&E's proposed "enhanced" program supported by the Settling Parties. However, the Ruling does not provide the non-settling parties an opportunity to respond to this new information. The Ruling should be modified to allow non-settling parties to submit written rebuttal testimony on or before April 19 to the Settling Parties' collective responses to the ALJ's Appendix A questions.

## **I. PROCEDURAL HISTORY**

On February 9, 2015, PG&E filed Application 15-02-009, seeking approval of its proposed Electric Vehicle Infrastructure and Education Program (“EV Program”). Parties filed responses and protests on March 11-13, 2015.

On June 12, 2015, a prehearing conference was held to determine the parties, issues, schedule, and other procedural matters. On September 4, 2015, the Assigned Commissioner and Assigned Administrative Law Judges issued a Scoping Memo and Ruling requiring PG&E to file and serve a supplement to its application no later than October 12, 2015 that “must set forth an initial phase of EV charging station deployment, limited to a maximum of 10% of the originally-proposed number of charging stations, to be deployed over no more than 24 months.”<sup>3</sup>

On October 12, 2015, PG&E served its supplemental testimony. PG&E’s supplemental testimony included a program that was intended to be consistent with the Scoping Memo and Ruling (PG&E described this as the “compliant” proposal, even though its DC fast charger (“DCFC”) program was scaled to 50% of the original size rather than the required 10%). PG&E also proposed a new non-compliant program, which PG&E called the “enhanced” proposal. The enhanced proposal would deploy up to 7,530 EV charging stations over 36 months from the date of first construction.<sup>4</sup>

On October 23, 2015, several parties filed a motion to strike those portions of PG&E’s supplemental testimony that reference PG&E’s “enhanced” proposal, on the grounds that PG&E’s “enhanced proposal” is beyond the scope of this proceeding and is not responsive to the Scoping Memo.

---

<sup>3</sup> Joint Assigned Commissioner and Administrative Law Judges’ Scoping Memo and Ruling (“Scoping Memo and Ruling”) at 7.

<sup>4</sup> Pacific Gas and Electric Company’s Supplement to Application Pursuant to Joint Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling p.1.

On November 2, 2015, PG&E filed a reply to the motion to strike. In its reply, PG&E stated that although PG&E disagrees with the motion's arguments on the merits of PG&E's "enhanced" proposal, "the parties to the Motion are free to make those arguments on the record in their testimony and at hearings."<sup>5</sup> On the same date, the ALJ issued an email ruling denying the motion to strike, but allowing all parties two additional weeks to prepare responsive testimony.

On November 30, 2015, 14 parties served intervenor testimony in response to PG&E's supplemental testimony. Five of the Settling Parties (Alliance of Auto Manufacturers, Greenlots, Sierra Club, Center for Sustainable Energy, and Sonoma Clean Energy) did not file any intervenor testimony. Seven of the Settling Parties (American Honda Motor Co., the Coalition of California Utility Employees, General Motors LLC, The Greenlining Institute, Marin Clean Energy, Natural Resources Defense Council ("NRDC"), and Plug In America) did file intervenor testimony.<sup>6</sup> However, only one of these seven active Settling Parties raised any objection to PG&E's proposed program in its intervenor testimony. The intervenor testimony of all the other Settling Parties supported PG&E's proposal and urged its adoption without any modification.<sup>7</sup> Specifically:

---

<sup>5</sup> Pacific Gas and Electric Company's Response to Motion of the Utility Reform Network, et al. to Strike Portions of PG&E's Supplemental Testimony, p.2.

<sup>6</sup> American Honda Motor Co. and General Motors LLC submitted Joint Testimony, NRDC, Greenlining Institute, The Coalition of California Utility Employees and Plug In America filed Joint Testimony, and Greenlining Institute and NRDC filed additional Joint Testimony.

<sup>7</sup> There is language in the testimony of some of the Settling Parties suggesting that, while supporting PG&E's proposal without change, they would also support a program size larger than was permitted under Commissioner Peterman and the ALJs' Scoping Order and Ruling or even PG&E's non-compliant "enhanced" proposal. See Max Baumhefner on Behalf of the Natural Resources Defense Council, the Coalition of California Utility Employees, the Greenlining Institute, and Plug In America (November 30, 2015) ("NRDC/CCUE/Greenlining/Plug In America Testimony") p. 20. Honda and GM similarly supported adoption of the "enhanced" PG&E proposal without change, with an added recommendation to recognize a pilot vehicle grid integration platform being developed by EPRI as "allowable" for participants. Testimony of Ryan Harty on Behalf of American Honda Motor Co., Inc. and General

- NRDC (jointly with the Coalition of California Utility Employees, Greenlining Institute and Plug in America) submitted testimony urging the Commission “to act expeditiously on PG&E’s ‘EV Infrastructure and Education Program’ application.”<sup>8</sup> The testimony did not contest any aspect of the PG&E “enhanced” proposal.
- Greenlining Institute (jointly with NRDC) offered testimony urging the Commission to “act expeditiously and equitably on PG&E’s ‘EV Infrastructure and Education Program’ application.”<sup>9</sup> The testimony did not contain a single criticism of the PG&E “enhanced” proposal, but stated instead that the proposal “has the potential to complement and enhance vehicle deployment programs already being implemented pursuant to the Charge Ahead California Initiative.”<sup>10</sup>
- Honda and General Motors also submitted brief testimony urging the Commission to “act expeditiously on PG&E’s ‘EV Infrastructure and Education Program’ application.”<sup>11</sup> Their testimony urged adoption of an Open Vehicle Grid Integration Platform that is being developed by the auto companies and utilities, but did not contain any criticism of the PG&E proposal.
- MCE is the only one of the 14 Settling Parties that submitted testimony contesting any aspect of the PG&E proposal. “In particular, MCE recommends the Commission to direct PG&E to provide greater details on its treatment of CCAs [“Community Choice Aggregators”] and jurisdictions actively pursuing CCAs during its deployment.”<sup>12</sup> MCE’s testimony also recommended that the Commission should direct PG&E to revise its full utility ownership model of EVSEs to a make-ready model that is similar to the SCE Phase 1 Settlement in order to minimize the risks imposed on ratepayer funds.

Many other parties, including ORA, TURN, EVCA, ChargePoint, TechNet, Vote Solar, Green Power Institute, and the Joint Minority Parties, submitted intervenor testimony that vigorously contested many aspects of the PG&E proposal. PG&E did not reach a negotiated settlement with any of these eight parties on any of the material disputed issues raised in their

---

Motors LLC (November 30, 2015) (“Honda GM Testimony”) p.2. For ease of reference, a comparison of the Settling Parties’ litigation positions to the Settlement Agreement is appended as Attachment 1 hereto.

<sup>8</sup> NRDC/CCUE/Greenlining/Plug In America Testimony p.21.

<sup>9</sup> Testimony of Joel Espino on Behalf of the Greenlining Institute and the Natural Resources Defense Council (November 30, 2015) p.14.

<sup>10</sup> Id.

<sup>11</sup> Honda/GM Testimony p.3.

<sup>12</sup> Testimony of Marin Clean Energy on the Potential Anti-Competitive Impacts and Risks to Ratepayers Posed by Pacific Gas and Electric Company’s Electric Vehicle Service Equipment Deployment Proposal (November 30, 2015) p.14.

testimony. All of the issues that these parties raised in opposition to PG&E’s proposal remain largely unresolved.

### Summary of Unresolved Disputed Issues

ORA	<ul style="list-style-type: none"> <li>• Cost &amp; size of program</li> <li>• Number of DCFC</li> <li>• Ratepayer funding of program</li> <li>• Competitive impact of PG&amp;E ownership of Charging Stations</li> <li>• Charging station siting (i.e. market segmentation)</li> <li>• Defining Marketing, Education and Outreach (ME&amp;O) guidelines</li> <li>• “Bridge” funding mechanism</li> </ul>
TURN	<ul style="list-style-type: none"> <li>• Cost &amp; size of program</li> <li>• Number of DCFC</li> <li>• Program Duration</li> <li>• Ratepayer funding for charging stations and proposed utility ownership model</li> <li>• Amount &amp; Structure of participation payment</li> <li>• Exclusion of L1 Chargers from program design</li> <li>• “Bridge” funding mechanism</li> </ul>
ChargePoint	<ul style="list-style-type: none"> <li>• Anti-competitive impacts of PG&amp;E procurement, ownership and operation of EVSE and network services</li> <li>• Program size and duration</li> <li>• Limits on site host control over choice of EVSE, services, and pricing</li> <li>• Other program design flaws</li> <li>• Market segmentation wrong for Northern California</li> </ul>
EVCA	<ul style="list-style-type: none"> <li>• Utility role in developing EV infrastructure should be focused on make ready</li> <li>• Number of DCFC</li> </ul>
TechNet	<ul style="list-style-type: none"> <li>• Lack of site host participation and customer choice</li> <li>• Impact on innovation and on-site</li> </ul>

	<p>energy management options</p> <ul style="list-style-type: none"> <li>• Proposal does not effectively leverage private sector capital</li> </ul>
Vote Solar	<ul style="list-style-type: none"> <li>• Size and cost of program</li> <li>• Number of DCFC and potential impact on the grid; lack of specifics on how to mitigate potential impacts leveraging other forms of DER (“Distributed Energy Resources”).</li> <li>• Competitive impact from PG&amp;E owning the system and socializing costs</li> <li>• Data collection and reporting does not track program effectiveness with respect to optimal locations or achieving maximum net benefits for all customers, per Pub. Utilities Code Section 769</li> <li>• Lacks specific plan for how EV charging might leverage other forms of DER to provide maximum net benefits to all ratepayers in achieving renewable integration goals</li> <li>• Load management using Time of Use (“TOU”) rates limits ability to provide other grid services in the near-term, such as voltage/frequency support.</li> </ul>
GPI	<ul style="list-style-type: none"> <li>• Competitive impact of PG&amp;E ownership of charging stations</li> <li>• Administration and implementation of program education and outreach activities</li> <li>• Reasonableness of program costs and cost oversight by independent program evaluator</li> </ul>
JMP	<ul style="list-style-type: none"> <li>• Cost, Size, and Duration of Program</li> <li>• Allocation of Funding among Shareholders, Site Hosts, EV Drivers, and Ratepayers</li> <li>• Exemption from Cost Recovery for</li> </ul>

	<p>Low-Income and CARE Ratepayers</p> <ul style="list-style-type: none"> <li>• PG&amp;E Ownership of Charging Stations</li> <li>• ME&amp;O Targeted to Low-Income and Minority Communities</li> </ul>
--	---

PG&E submitted rebuttal testimony on December 21, 2015 that challenged many of the arguments and recommendations of non-settling parties. However, PG&E’s rebuttal testimony clarified its position that customers operating and maintain charging stations may choose service from “eligible suppliers” including CCAs, and agreed with MCE that PG&E should collaborate with CCAs in marketing, education and outreach.<sup>13</sup> PG&E’s rebuttal testimony also responded “yes” to the load management recommendations in GM and Honda’s intervenor testimony.<sup>14</sup>

Evidentiary hearings were originally scheduled to commence on February 8, 2016. However, on February 1, 2016, PG&E requested that the hearings be taken off calendar so that PG&E could explore settlement negotiations. Seven weeks later, PG&E filed the instant Joint Motion, supported by a group of parties, all but one of which had not contested any aspect of the Application in their intervenor testimony.

On March 29, 2016, the ALJ issued a Ruling which, among other matters, set evidentiary hearings for the week of April 25, 2016, set a schedule for filing comments on the Settlement, directed that signatories to the Settlement Agreement designate no more than five individuals (at least one of whom shall be from PG&E) that will serve as a panel to respond to cross-examination questions specific to the Settlement Agreement, and directed the Settling Parties to collectively serve (but not file) a response to the questions presented in Attachment A to the ruling on or before April 12, 2016.

<sup>13</sup> PG&E Rebuttal Testimony p. 20-21.

<sup>14</sup> PG&E Rebuttal Testimony p. 21-22.

**II. THE COMMISSION SHOULD PROCEED TO SCHEDULED EVIDENTIARY HEARINGS, AND ALLOW THE SETTLING PARTIES TO OFFER THE SETTLEMENT AS JOINT TESTIMONY.**

**A. The ALJ has the authority and the discretion to proceed directly to hearings on the underlying issues, in which the proposed Settlement may be received as joint testimony.**

The Commission does not need to provide a proposed settlement filing the deference and due process ordinarily afforded to negotiated settlement agreements merely because certain parties with a common interest in the outcome of the proceeding may choose to characterize their joint proposal as a “settlement.” Rule 12.4 expressly provides that the Commission in its discretion may determine that a proposed settlement should be received as joint testimony and proceed directly to hearings on the underlying issues. This does not mean that the recommendations advanced in the proposed settlement will not be introduced into the record, and considered. It simply means that the Commission has determined that it is more appropriate to receive the proposals in the settlement as joint testimony, along with other evidence on the underlying issues.

**B. The Settlement should be received as joint testimony because it does not resolve contested issues.**

The primary purpose of the settlement process set forth in the Commission’s rules is to provide an expeditious resolution of contested issues, so as to avoid the lengthier and more resource-intensive process of resolving the contested issues through evidentiary hearings and briefs.<sup>15</sup> However, if a settlement is merely an agreement among parties that support the underlying proposal and that have not raised any material contested issues to be resolved, then

---

<sup>15</sup> *In the matter of the Application of the Golden State Water Company for an order authorizing it to increase rates for water service*, D.13-05-011 (2013) at 48; *Application of PG&E to Revise its Electric Marginal Costs, Revenue Allocation, and Rate Design, including Real Time Pricing, to Revise its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures*, D.12-03-015 (2012) at 17-18.

that so-called “settlement” will *not* have resolved contested issues, narrowed the scope of matters to be adjudicated nor helped to expedite resolution of contested issues in lieu of litigation.

The proposed Settlement submitted in this case has settled nothing. None of the Settling Parties, other than MCE, have raised objections to the PG&E proposal. And while MCE has raised concerns and recommendations regarding certain aspects of the PG&E program, only those concerns and recommendations related to the specific interactions with CCAs appear to have been addressed by the Settlement.

PG&E’s Motion for Adoption of Joint Settlement surprisingly asserts that the testimony of NRDC, Greenlining Institute, CCUE and Plug In America did not unqualifiedly support PG&E’s “enhanced” proposal.<sup>16</sup> However on closer examination this representation is based solely on the fact that these parties’ testimony unequivocally supporting PG&E’s proposal included a sentence stating that they would also support an even larger version of PG&E’s “enhanced” program.<sup>17</sup> This attempt to recast PG&E’s supporters as something other than what they are suggests that even PG&E itself is uncomfortable with the fact that all but one of the parties to its “settlement” never had any objections to the application in the first place.

There are significant contested issues in this case, but they are not resolved by the Settlement. The Settlement does not resolve issues regarding the number of charging stations or the budget for the PG&E program. The Settlement does not resolve the question of whether PG&E’s “enhanced” proposal is on its face a violation of the scoping order. The Settlement does not resolve the question of whether PG&E’s proposal meets the requirements of Public Utilities Code section 740.3 and the Commission’s balancing test for ensuring that a utility’s proposal does not result in anticompetitive impacts on market participants. And the Settlement resolves

---

<sup>16</sup> Motion p. 11

<sup>17</sup> Id.

none of the many program design issues and recommendations presented in the testimony of intervening parties, except for the narrow CCA questions uniquely raised in MCE's testimony.

**C. The Settlement is not the product of arms-length negotiations.**

A threshold consideration in assessing whether a settlement may be considered reasonable, consistent with law, and in the public interest, is whether the settlement is the product of arms-length negotiations between the parties. PG&E's proposed Settlement in this case does not meet this foundational requirement, because the Settlement's recommended disposition of disputed issues does not reflect negotiation or compromise between opposing parties. PG&E's so-called negotiated agreement between itself and parties that have supported its application throughout this proceeding is not at "arms-length," and for that matter cannot be called a "negotiated agreement" except with respect to that part of the Settlement involving MCE.<sup>18</sup>

The Commission's view of "arms-length" negotiations in other settlement cases is instructive. For example, in the settlement on interconnection rules adopted by Decision 12-09-018, the settlement parties represented "a diverse group of IOU, ratepayer, distributed generation advocate, environmental and developer interests." These diverse parties "actively participated in the negotiations, advocating positions based on rigorous analysis and technical support" and "made a number of concessions relate to their initial positions on the issues of concern to them in

---

<sup>18</sup> It should be noted that PG&E had provided clarification in its Rebuttal Testimony (pp.20-21) that PG&E would not condition CCA customers' participation on purchase of electricity from PG&E and a promise to "collaborate" with CCAs. This concession by PG&E is reflected in the Settlement. However the Settlement does not address MCE's other recommendation, which was to "revise its fully utility ownership model of EVSEs to a make-ready model that is similar to the SCE Phase 1 Settlement in order to minimize the risks imposed on ratepayer funds." MCE Testimony p. 14. Therefore this issue, which is shared by a number of non-settling parties, was not resolved by the Settlement.

order to reach agreement.”<sup>19</sup> Similarly, in Decision 14-03-007 (adopting a settlement of infrastructure and utility rate issues), the Commission indicated that it was “confident that this settlement is the product of arms-length negotiation,” citing the fact that the settlement “undisputedly reflects and incorporates numerous and significant concessions made by each of the active parties not only to remove opposition to, but also to gain support for, this proposal.”<sup>20</sup>

In Decision 13-05-011 (adopting a rate case settlement) the Commission again focused on diversity of interests and compromise between parties with disparate positions in the case:

The Settling Parties have *balanced a variety of issues important to them* and have agreed to the proposals put forth in the Settlement as a reasonable means by which to finally resolve the issues identified in this proceeding. Each of the proposals put forth in the Settlement reflect *compromises made by the Settling Parties from their competing litigation positions*. Each resolved issue put forth in the Settlement is reasonable in light of the whole record, because the Settling Parties fairly reflect the affected interests, these parties *actively participated in this proceeding*, and the proposals put forth in the Settlement fairly and reasonably resolve the *issues raised by the parties*. The Settling Parties are experienced in public utility litigation, and the Settlement is the result of *extensive and vigorous negotiations*, including Commission-assisted mediation.<sup>21</sup>

In considering whether a proposed settlement is real and potentially in the public interest, it matters whether significant concessions have been made among active parties, and whether the sponsors of the settlement represent the affected parties.<sup>22</sup> Not every participant in an arms-

---

<sup>19</sup> *Order Instituting Rulemaking on the Commission’s Own Motion to improve distribution level interconnection rules and regulations for certain classes of electric generators and electric storage resources*, D.12-09-018, Attachment A, p.10.

<sup>20</sup> *Joint Application of Southern California Edison Company and the City of Long Beach for Approval of an Infrastructure and Rate Proposal for Maritime Entities in the Port of Long Beach*, D.14-03-007 (2014) at 20.

<sup>21</sup> *In the matter of the Application of the Golden State Water Company (U 133 W) for an order authorizing it to increase rates for water service*, D.13-05-011 (2013) at 47 (emphasis added)

<sup>22</sup> See *Order Instituting Rulemaking to Examine the Commission’s Energy Efficiency Risk/Reward Incentive Mechanism*, D.09-12-045 (2009) at 33-34 (rejecting RRIM settlement in part because concessions are of “little value” and sponsors do not represent all affected interests.); *Application of PG&E to Revise its Electric Marginal Costs, Revenue Allocation, and Rate Design, including Real Time Pricing, to Revise its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures*, D.12-03-015 (2012) at 20 (approving rate settlement in part because it represents arms-length negotiation of divergent litigation positions of affected parties representing ratepayers, consumer interests, and the applicant).

length settlement negotiation need be adverse to every other party. But in order to have an arms-length negotiation, there must be parties at the table that have submitted testimony identifying disputed issues, and there must be evidence of meaningful compromise between parties on the issues they have raised. In the case of PG&E's proposed Settlement, there is no evidence of negotiation or compromise whatsoever with respect to any of the active parties except one, Marin Clean Energy. MCE did have a competing litigation position, and the Settlement implies compromise on a primary issue of interest to MCE, which was clarifying the rights of CCAs.

As the Settlement plainly did not involve arms-length negotiations except between PG&E and one active party, it does not facially meet the Commission's definition of a real settlement agreement. The "arms-length negotiations" requirement would be meaningless if disputed issues in a utility application proceeding can be considered "negotiated" and "settled" without participation by the active parties who have raised contested issues.<sup>23</sup>

**D. Clarifying that the Settlement should be received as joint testimony will contribute to the fair and expeditious resolution of disputed issues raised in this proceeding.**

As discussed above, the Settlement does not resolve any material disputed issues in this case except for certain narrow CCA questions exclusively raised by MCE. While the other Settling Parties appear to have jointly decided to advocate for a different version of PG&E's "enhanced" proposal than the one they originally supported in testimony, that proposal is not supported by the any of the active non-settling parties, including parties representing ratepayers,

---

<sup>23</sup> PG&E's representation on page 24 of the Motion that the Settling Parties "negotiated in good faith, bargained aggressively, and, ultimately compromised" is incomprehensible. In order for parties to "bargain aggressively" and "ultimately compromise" they must have material disputed issues between them, which in the case of all but one of the Settling Parties is obviously not the case. Likewise PG&E's representation on page 25 of the Motion that the Settling Parties included "compromise changes" in the Settlement to "take into account" the positions of the non-settling parties perverts the meaning of "compromise" and is simply an admission of PG&E's failure to settle with the parties that actually have issues with its proposal.

the EV equipment and services industry, EV commercial site hosts, disadvantaged communities, and renewable energy producers, that have submitted extensive testimony on the full range of issues that remain unresolved in this latest version of PG&E's "enhanced" proposal. Thus, notwithstanding PG&E's representation on page 24 of the Motion, that the Settlement "reduces the risk that litigation will waste time and resources of the parties and the Commission," it is clear on the face of the Motion and Settlement that the Commission will be required to hold evidentiary hearings that will encompass virtually all of the issues previously raised by parties in this proceeding. The March 29, 2016 Ruling seems to acknowledge this as well, in that it instructs all parties to identify disputed issues of fact and proceed to make their witnesses available on issues raised in their testimony.<sup>24</sup>

**E. Treating a joint proposal that attempts to enhance the "enhanced" proposal as if it were a bona fide settlement would deny the due process rights of the non-settling parties.**

The Joint Motion requests that the Commission find the Settlement "reasonable in light of the whole record, consistent with law, and in the public interest," and adopt it in its entirety with no modifications.<sup>25</sup> The Commission could not grant this request without denying the due process rights of the non-settling parties to the proceeding.

First, there is the question of the size and duration of the program. PG&E was explicitly ordered by Commissioner Peterman and the ALJs to submit a Phase 1 program proposal limited to a maximum of 2,510 charging stations to be deployed over no more than 2 years.<sup>26</sup> PG&E chose to disregard that order and other language in the Commission's Scoping Memo restricting the scope of this Phase 1 proceeding to consideration of the PG&E program "as updated in the

---

<sup>24</sup> Ruling p.2.

<sup>25</sup> Motion at 26.

<sup>26</sup> Scoping Memo and Ruling at 7.

required supplement.”<sup>27</sup> Instead, PG&E submitted both a “compliant” proposal and a non-compliant “enhanced” proposal that was approximately three times larger.

Now PG&E offers the Settlement, which would authorize it to deploy 7,500 Level 2 charging ports and 100 DC fast chargers, making it an even larger “enhanced” program than the one described in PG&E’s supplemental testimony, and in the case of DCFC the same size as PG&E’s original proposal. The “compliant” proposal is briefly mentioned in the background section of the Settlement, but is nowhere to be found in the Settlement’s terms, since PG&E and its supporters have apparently “negotiated” it out of existence.<sup>28</sup>

As noted above, PG&E’s November 2, 2015 reply to the motion to strike PG&E’s testimony describing the non-compliant “enhanced” proposal argued that “the parties to the Motion are free to make those arguments on the record in their testimony and at hearings.” A ruling clarifying that the proposed Settlement will be received as joint testimony will preserve non-settling parties’ right to advocate for a PG&E program that is actually consistent with the Scoping Memo and Ruling in scope and size.<sup>29</sup>

Looking to the other issues in the case, there is a similar due process concern. PG&E and the other Settling Parties have submitted what is described as a proposal that “significantly modifies” PG&E’s prior proposal in the form of a “settlement.”<sup>30</sup> PG&E could have instead

---

<sup>27</sup> Id. at 9.

<sup>28</sup> Strangely, Table 1 on page 5 of the Joint Motion, purportedly showing a comparison between the Settlement and “prior PG&E proposals” includes only PG&E’s original proposal (25,000 L2 and 100 DC fast chargers), the original non-compliant “enhanced” proposal (7,430 L2, 100 DCFC), and the new Settlement version of the “enhanced” proposal (7,500 L2 ports, 100 DCFC). There is no column showing the compliant proposal ordered by Commissioner Peterman and the ALJs. There is some ambiguity as to the number of deployments in any of PG&E’s proposals because the original application and rulings addressing it referred to “charging stations” whereas the Settlement refers to L2 “ports.” Some charging stations have more than one port.

<sup>29</sup> See *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4<sup>th</sup> 1085 (CPUC is required to respect the scope of issues identified in a scoping memo).

<sup>30</sup> Joint Motion at 2.

chosen the more conventional path of seeking leave from the ALJ to amend its application and testimony to include these new proposed modifications. This approach would have preserved all parties' procedural rights.

Since PG&E has chosen instead to offer its package of modifications in the form of a settlement, the Commission needs to determine how best to preserve the non-setting parties' due process rights, while accommodating PG&E's (and the supporting Settling Parties') interest in jointly supporting a newly modified version of PG&E's Phase 1 proposal. Since the modifications do not reflect participation by any active opposing party except for MCE, the Commission should clarify that the Settlement document is in the nature of joint testimony. The Commission may then receive the "Settlement" as joint testimony (along with supplemental testimony addressing the responses in Attachment A), allow rebuttal testimony limited to the Attachment A questions, and proceed expeditiously to hearings on the dates set by the ALJ on all identified disputed issues.

### **III. CONCLUSION**

For the reasons discussed above, the Non-Settling Parties recommend that the Commission act expeditiously under Rule 12.4 to allow the Settling Parties to submit the Settlement as joint testimony, and proceed to hearings as instructed in the March 29, 2016 Ruling. This approach is the only way to keep this proceeding on track and protect the procedural rights of all parties to this proceeding.

The Settling Parties' proposed modifications to PG&E's non-compliant "enhanced" proposal will be admitted into the record as joint testimony, and made available for consideration and scrutiny by other parties and the Commission through the well-established processes of cross examination and briefing. All non-settling parties' rights will be preserved by ensuring that they

Will have the opportunity to present testimony and argument on all the issues in the case.

The Non-Settling Parties do not object to the provisions of the Ruling regarding the filing of comments and reply comments on the joint testimony, the questions posed by the ALJ or the use of a panel at the hearings for PG&E and other sponsors of the joint testimony and supplemental joint testimony on the Attachment A questions to respond to cross examination. All of these processes are consistent with the Non-Settling Parties' position in this Response. The Non-Settling Parties do request, however, the right to submit rebuttal testimony in response to the Settling Parties' April 12 joint testimony responding to the questions posed by the ALJ Ruling. This will ensure a full record for the Commission's consideration.

**Dated: April 1, 2016**

Respectfully submitted,

/s/

---

Elise Torres  
Staff Attorney  
The Utility Reform Network  
San Francisco, CA 94103  
Phone: (415) 929-8876 ext. 308  
Email: [etorres@turn.org](mailto:etorres@turn.org)

/s/

---

James M. Ralph  
Attorney for the  
Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-4673  
Email: [james.ralph@cpuc.ca.gov](mailto:james.ralph@cpuc.ca.gov)

/s/

---

Tadashi Gondai  
Senior Attorney  
National Asian American Coalition  
on behalf of the Joint Minority Parties  
15 Southgate Avenue, Suite 200  
Daly City, CA 94015  
Phone: (650) 952-0522 x235  
Email: [tgondai@naacoalition.org](mailto:tgondai@naacoalition.org)

/s/

---

Damon Conklin  
Electric Vehicle Charging Association  
1020 16<sup>th</sup> Street, Suite 20  
Sacramento, CA 95814  
Phone: (916) 447-4099  
Email: [Damon.Conklin@DeweySquare.com](mailto:Damon.Conklin@DeweySquare.com)

/s/

---

Gregg Wheatland  
Lynn Haug  
Ellison, Schneider & Harris, LLP  
Attorneys for ChargePoint, Inc.  
2600 Capital Avenue, 4<sup>th</sup> Floor  
Sacramento, CA 95816  
Phone: (916) 447-2166  
Email: [glw@eslawfirm.com](mailto:glw@eslawfirm.com)

/s/

---

Andrea Deveau  
Executive Director, California and  
Southwest U.S.  
TechNet  
1001 K Street, Sixth Floor  
Sacramento, CA 95814  
Phone: (805) 234-5481  
Email: [adeveau@technet.org](mailto:adeveau@technet.org)

/s/

---

Jim Baak  
Program Director, Grid Integration  
Vote Solar  
360 22<sup>nd</sup> Street, Suite 730  
Oakland, CA 94612  
Phone: (925) 788-3411  
Email: [jbaak@votesolar.org](mailto:jbaak@votesolar.org)

**ATTACHMENT 1**  
**COMPARISON OF SETTLING PARTIES' LITIGATION POSITION**  
**TO PROPOSED SETTLEMENT**

<b>Party</b>	<b>Filed Testimony?</b>	<b>Recommended change to PG&amp;E Enhanced Proposal?</b>	<b>Recommendation addressed by Settlement?</b>
Sierra Club	No	No	N/A
Green Lots	No	No	N/A
Center for Sustainable Energy	No	No	N/A
Sonoma Clean Power Authority	No	No	N/A
Alliance of Automobile Manufacturers	No	No	N/A
General Motors	Yes	Yes: Support “enhanced” program, with inclusion of EPRI OVGIP	Settlement includes EPRI OVGIP
American Honda Motor Company	Yes	Yes: Support “enhanced” program, with inclusion of EPRI OVGIP	Settlement includes EPRI OVGIP
Plug In America	Yes	Yes: Support “enhanced” program but number of charging stations could be larger.	Settlement increases proposed number of charging stations from 7530 to 7600
Coalition of California Utility Employees	Yes	Yes: Support “enhanced” program but number of charging stations could be larger.	Settlement increases proposed number of charging stations from 7530 to 7600
Greenlining Institute	Yes	Yes: Support “enhanced” program but number of charging stations could be larger.	Settlement increases proposed number of charging stations from 7530 to 7600
NRDC	Yes	Yes: Support “enhanced” program but number of charging stations could be larger.	Settlement increases proposed number of charging stations from 7530 to 7600
Marin Clean Energy	Yes	Yes: (1) “PG&E Must Directly Engage With CCAs to Facilitate EVSE Deployment”	(1) Settlement provides additional detail about how PG&E will coordinate and collaborate with CCAs to enhance the program deployment

		(2) “PG&E’S Model Of Full Ownership Of EVSEs Poses Risks To Ratepayers, And Should Be Modified After The “Make-Ready” Model In The SCE’s Phase 1 Settlement To Minimize Risks”	(2) Not addressed by Settlement.
--	--	--	----------------------------------